

Message Text

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TO AMEMBASSY NEW DELHI IMMEDIATE

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SUBJECT: NOTE TO INDIAN EMBASSY ON JHIRAD CASE

FOLLOWING IS THE TEXT OF NOTE GIVEN THE INDIAN EMBASSY
DEC 30 ON JHIRAD CASE.

"THE DEPARTMENT OF STATE REFERS TO THE NOTE OF MAY 8, 1972, FROM THE EMBASSY OF INDIA REQUESTING THE EXTRADITION OF ELIJAH EPHRAIM JHIRAD AND TAKES THIS OPPORTUNITY TO ADVISE THE EMBASSY OF THE DECISION OF THE ACTING SECRETARY OF STATE IN THIS MATTER.

IN ACCORDANCE WITH THE LAWS OF THE UNITED STATES AND THE EXTRADITION TREATY IN FORCE BETWEEN THE TWO COUNTRIES, THE ACTING SECRETARY OF STATE HAS REVIEWED THE RECORD IN THE CASE OF ELIJAH EPHRAIM JHIRAD, AS CERTIFIED BY THE MAGISTRATE ON NOVEMBER 5, 1976, AND HAS DECIDED THAT EXTRADITION OF MR. JHIRAD WOULD NOT BE CONSISTENT WITH THE EXTRADITION TREATY IN FORCE BETWEEN THE UNITED STATES AND INDIA.

ARTICLE 5 OF THE TREATY PROVIDES THAT "EXTRADITION SHALL
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NOT TAKE PLACE IF, SUBSEQUENTLY TO THE COMMISSION OF THE

CRIME OR OFFENSE OR THE INSTITUTION OF THE PENAL PROSECUTION OR THE CONVICTION THEREON, EXEMPTION FROM PROSECUTION OR PUNISHMENT HAS BEEN ACQUIRED BY LAPSE OF TIME, ACCORDING TO THE LAWS OF..."EITHER PARTY. UNDER THE LAWS OF THE

UNITED STATES, THE RELEVANT STATUTE OF LIMITATIONS (18 U.S.C. 3282) PRESCRIBES A FIVE-YEAR PERIOD AFTER THE COMMISSION OF THE OFFENSE. IN THIS CASE, THE ACTS IN QUESTION ALLEGEDLY OCCURRED ON SEPTEMBER 25 AND 27, 1961. THE CRIMINAL CHARGES AGAINST MR. JHIRAD WERE FIRST FILED IN INDIA IN OCTOBER 1968, LONG AFTER THIS PERIOD HAD RUN. THE ONLY ARGUMENT FOR THE PROPOSITION THAT THIS LAPSE OF TIME DOES NOT CONSTITUTE A BAR TO EXTRADITION PURSUANT TO ARTICLE 5 IS THAT THE RUNNING OF THE UNITED STATES STATUTE OF LIMITATIONS SHOULD BE CONSIDERED TO HAVE BEEN TOLLED BY MR. JHIRAD'S DEPARTURE FROM INDIA IN JULY 1966, TWO MONTHS PRIOR TO THE EXPIRATION OF THE FIVE-YEAR PERIOD OR HIS FAILURE TO RETURN WITHIN THAT PERIOD. THE APPLICABLE FEDERAL LAW OF THE UNITED STATES (SECTION 3290 OF TITLE 18 OF THE UNITED STATES CODE) REQUIRES THAT THE RUNNING OF THE STATUTE OF LIMITATIONS BE STOPPED AT SUCH TIME AS A PERSON FLEES FROM JUSTICE. THE QUESTION FOR DECISION, THEREFORE, WAS WHETHER MR. JHIRAD MAY PROPERLY BE CONSIDERED TO HAVE BECOME A FUGITIVE FROM JUSTICE PRIOR TO SEPTEMBER 27, 1966. THE MAGISTRATE WHO HEARD THE CASE FOUND THAT MR. JHIRAD'S PRIMARY PURPOSE IN LEAVING INDIA WAS TO ATTEND A WORLD JEWISH CONFERENCE IN BRUSSELS, RATHER THAN TO FLEE FROM JUSTICE. HOWEVER, THE MAGISTRATE ALSO CONCLUDED THAT MR. JHIRAD DECIDED AT SOME POINT DURING HIS EUROPEAN VACATION FOLLOWING THE CONFERENCE NOT TO RETURN TO INDIA, AT WHICH POINT HE BECAME A PERSON FLEEING FROM JUSTICE. CONSIDERING EVIDENCE PRESENTED CONCERNING THE DURATION OF MR. JHIRAD'S PREVIOUS VACATIONS IN WESTERN EUROPE, THE MAGISTRATE CONCLUDED THAT THIS DECISION WAS PROBABLY TAKEN ABOUT THE MIDDLE OF SEPTEMBER 1966. THE MAGISTRATE NOTED LIMITED OFFICIAL USE

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THAT THIS WAS NOT PROVED BEYOND A REASONABLE DOUBT, BUT CONCLUDED THAT IT MET THE APPLICABLE STANDARD OF THE PREPONDERANCE OF THE EVIDENCE. HOWEVER, WITH THE GREATEST OF RESPECT FOR THE MAGISTRATE, THE ACTING SECRETARY OF STATE, IN EXERCISE OF STATUTORY RESPONSIBILITIES TO REVIEW THE RECORD IN THE CASE, WAS UNABLE TO ACCEPT THE CONCLUSION THAT INTENT TO FLEE FROM JUSTICE WAS FORMED BY MID-SEPTEMBER 1966, WITHIN THE MEANING OF ARTICLE 5 OF THE TREATY. EVIDENCE OF PAST VACATION PATTERNS WAS SIMPLY TOO FRAGILE A BASIS FOR SUCH A CONCLUSION, PARTICULARLY CONSIDERING THAT THOSE EARLIER VACATIONS WERE PRIOR TO MR. JHIRAD'S RETIREMENT. THE ACTING SECRETARY NOTED THAT THERE ARE IN THIS CASE SEVERAL REASONS TO REVIEW THE EVIDENCE WITH UNUSUAL CARE.

FIRST, THE ISSUE OF THE INTERPRETATION OF ARTICLE 5 OF THE TREATY AS IT RELATES TO THE TOLLING OF THE STATUTE OF LIMITATIONS IS A NOVEL ONE, AND THE DEPARTMENT HAS A

SPECIAL RESPONSIBILITY TO ENSURE THAT THE PROPER INTERPRETATION IS APPLIED APPROPRIATELY IN LIGHT OF THE FACTS OF THE CASE AS REFLECTED IN THE RECORD. SECOND, WERE EXTRADITION TO BE GRANTED IN THIS CASE, THE ISSUE OF THE STATUTE OF LIMITATIONS COULD NOT BE LITIGATED IN PROCEEDINGS IN INDIA. THE LAPSE OF TIME IS A BAR TO EXTRADITION UNDER THE TREATY, BUT NOT TO TRIAL IN INDIA UNDER INDIAN LAW, WHICH DOES NOT PROVIDE A STATUTE OF LIMITATIONS. THIRD, IT IS OBVIOUS THAT THE LAPSE OF MORE THAN FIFTEEN YEARS WOULD CREATE UNUSUAL DIFFICULTIES FOR THE PREPARATION AND CONDUCT OF THE DEFENSE. THESE DIFFICULTIES ARE THE SORT THAT THE STATUTE OF LIMITATIONS AND ARTICLE 5 OF THE TREATY ARE DESIGNED TO PREVENT.

IN VIEW OF THESE CONSIDERATIONS, THE ACTING SECRETARY CONCLUDED THAT MR. JHIRAD'S EXTRADITION WAS BARRED BY THE LAPSE OF TIME IN ACCORDANCE WITH ARTICLE 5 OF THE 1931 TREATY OF EXTRADITION BETWEEN THE UNITED STATES OF AMERICA AND INDIA.

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THE ACTING SECRETARY NOTED THAT MR. JHIRAD HAS ARGUED VIGOROUSLY THAT HE WOULD BE SUBJECT TO POLITICAL PERSECUTION IN INDIA. AFTER REVIEWING THE EVIDENCE PRESENTED IN THIS CASE, THE ACTING SECRETARY WAS SATISFIED THAT THE COURTS WERE CORRECT IN THEIR FINDING THAT MR. JHIRAD FAILED TO PROVE ANY SUCH MOTIVE ON THE PART OF INDIA." ROBINSON

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